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12907 South 3600 West
Riverton, UT 84065
T: 801-257-5400 F: 801-257-5401
www.stampinup.com

July 17, 2006

Federal Trade Commission/Office of the Secretary
Room H-135 (Annex W)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Business Opportunity Rule, R511993

Dear Sir/ Madam

My name is Shelli Gardner. I am the co-founder and principal owner of Stampin' Up! Inc. We manufacture and sell decorative rubber stamps and related accessories through what is known as the home workshop or party-plan method of direct selling. This is also known as multi-level selling. My company's annual sales, when combined with those of its sister companies in Australia and Canada, are approximately \$250 million. The company has been in business since 1988. Its distinctive products and brand are well known throughout the rubber stamp, scrapbook and home hobby-art market. The sales are made through independent salespersons known as "demonstrators" who in turn sell the products to the millions of customers with whom they come in contact in the course of operating their independent businesses. It is also the objective of the demonstrator to recruit new demonstrators as down-line sellers and receive commissions and overrides on the volume sales of those persons.

Some demonstrators pursue the business opportunity offered by Stampin' Up! on a full-time basis; however, most Stampin' Up! demonstrators are hobbyists who work part-time to supplement family income and especially to enjoy the discounts and other benefits associated with selling Stampin' Up!'s quality products, and their love of the art form which is generally referred to as "stamping." With few exceptions, the demonstratorships are clearly home-based businesses, done in one's spare time. The vast majority of our demonstrators are hard working females with considerable family, employment and community/volunteer obligations that compete for their time. Realistically, few Stampin' Up! demonstrators have a great deal of spare time. As I am sure you can understand, simplicity and ease of practice are very important for a person pursuing a business opportunity under these circumstances.

Federal Trade Commission/Office of the Secretary
July 17, 2006
Page 2 of 5

I realize that you have received a great deal of input and comment in many areas in response to your proposed rule. Rather than merely restate those same arguments, I would like to address what I feel is the most salient issue of this entire effort by the FTC. Simply put, and with my deepest respect for the agency and its myriad of responsibilities, it seems eminently clear that the proposed rule is based upon a significant misunderstanding by the FTC of some very basic fundamentals of direct selling and the nature of many direct selling companies.

As I have reviewed your reasons for the proposed rule as set forth in the Notice of Proposed Rulemaking published by the FTC in April of 2006, it is evident that while you have developed an understanding of many of the problems of the industry, you lack the working understanding of the economics, functionality and practice of the industry that are necessary to craft a fair and effective solution to those problems. Hence, your proposed rule is fundamentally flawed. This is profoundly evident not only in the proposed rule, but also in the manner in which the FTC has framed the issues in the 116-page Notice referred to above.

In an effort to be brief, I will cite only a few examples. The Proposed Rule Section 437.3 (a) (6) (i) calls for the Seller to disclose the name, city, state and telephone number of all purchasers who have purchased the business opportunity over the past three years. If there are more than ten such purchasers, the disclosure may be limited to the ten purchasers over the past three years who are located nearest the prospective purchaser's location. As an alternative to the foregoing (assuming that the ten purchasers nearest the prospective purchaser may be too difficult to determine), the requirement would be to disclose all purchasers of the seller nationwide over the past three years.

First, you need to understand that both the identity and location of the demonstrators of our company is a very important trade secret. Because we are a direct selling company and do not sell directly to the consuming public, our customers are our demonstrators, who in turn sell to the public. A literal reading of the above referenced section of your proposed rule suggests that you are requiring the demonstrator and presumptively the Company as well to disclose to strangers the identities of some or all of its customers, and further, to deliver such information in a geographically organized format.

My first question is why would a company ever provide this information? But the even greater question is why would the government ever suggest that this information should be disclosed?

Federal Trade Commission/Office of the Secretary
July 17, 2006
Page 3 of 5

These questions lead me back to my initial concern that you do not understand the direct selling industry. By way of analogy, you should consider the life insurance industry. As significant of an investment as life insurance is (certainly far more significant than the mere one-time \$195.00 purchase of a Stampin' Up! starter kit), other than a short statutory right of rescission, there is no requirement to disclose some or all of the insurance company's or salesman's customers. In fact it would be preposterous to presume that insurance salespersons or companies would ever disclose this information to persons who are merely interested in an insurance policy, not to mention to other competitors or to the government. In most cases, this is information that is even protected from most employees and is shared only on a need-to-know basis. Yet, in effect, this is exactly what you are asking independent sellers in the direct selling industry to do. I cannot imagine that you intended a result that would compromise the company's ability to legally or practically protect its trade secrets, and even worse, to create a form of government imposed industrial espionage. The suggestion of such a scheme leads me to respectfully question whether you adequately understand the subject matter well enough to make rules to regulate it.

My second question is: Why would you suggest a seven-day waiting period (Section 437.2) before a person can actually purchase the business opportunity? I note in the Notice that you cite abuses by Pyramid Marketing Schemes (see 2.b., page 21) as justification for the disclosure and time delay requirement. You specifically focus on "... promises of large incomes" as the catalyst for fraud and deception. Again, your presuppositions indicate a basic misunderstanding of certain parts of the direct selling industry. You assume that the premise for recruiting persons to purchase direct selling business opportunities is largely based upon representations of large incomes. You seem to ignore the fact that there may be other more compelling reasons for taking on such business opportunities.

Although Stampin' Up! is a very successful company, it does not make earnings claims. In fact, we discourage our demonstrators from making any earnings claims as well. Stampin' Up! makes no promises of large incomes, nor do we hype the profit potential of our business opportunity in any of our company literature or in any presentations at company conventions. It is also a fact that our compensation program is far less attractive than you will find in companies that do focus on and make earnings claims. Yet it is clear from the statements in the Notice that you assume all direct selling companies thrive on promises of large income to induce recruits, or that there is some inherent failure on the part of companies to deliver training and promotional benefits to the independent sales force that leads to a drop out rate of 90% (I assume per year as your report is not clear on this point) (see 2.b., page 24). Yet our drop out rate is less than 50% per annum – a retention rate that would be the envy of most retail establishments. You don't seem to understand that many people are attracted to companies like Stampin' Up!

Federal Trade Commission/Office of the Secretary
July 17, 2006
Page 4 of 5

for reasons such as the love of art, love of the products and the love of people which bears out in the rich association that our 50,000 demonstrators enjoy with one another as part of the Stampin'Up! family. There are other companies in this industry that are similarly situated and whose circumstances and practices are neither reflected in your statement of the problem nor in your proposed rule. Simply put, you need to get to know us.

It would seem to me that the seven-day waiting period is likely the harshest restriction that you could impose. In fact, I believe that if you really understood the direct selling industry and how it works, you would quickly learn that the approach you have proposed would, in effect, destroy the ability of most companies to do business. I question whether the conclusion stated at 2. b. on page 25 of the Notice, "In view of the misrepresentations and omissions that fraudulent pyramid schemes promoters have used, as shown by consumer complaints and past commission cases, pre-sale disclosures and prohibitions are necessary to protect potential recruits from deceptive practices," is the appropriate conclusion given the nature of the businesses that would be affected. To address this issue, I think that the following questions should be carefully addressed:

1. If restrictions must be imposed, are there more reasonable alternatives that will accomplish your objectives without substantially interfering with the ability of the companies to conduct business? For example, if disclosure is required, why can't the direct seller merely deliver a disclosure document at the time of purchase and allow the purchaser to consider its content prior to the lapse of his or her three-day right of rescission?
2. Of the top 20 injury categories that you make reference to in your chart in 2. b. on page 25, how many of the industries represented in those categories have been subjected to pre-sale disclosure requirements?
3. Of those industries that have been subjected to pre-sale disclosure requirements, are any of the required waiting periods seven days or more?
4. Did any of the top 20 industries that were restricted already have statutorily imposed three-day cancellation rights, or an industry-wide one year 90% of inventory repurchase policy?
5. In preparing your Notice did you understand the distinction between "Home Based Businesses" and "Work at Home Schemes"? From your analysis on pages 20-25, it appears as though you lump the two concepts together without respect for any distinction, clearly allowing one to prejudice the other.

Federal Trade Commission/Office of the Secretary

July 17, 2006

Page 5 of 5

6. In the analysis of pyramid marketing schemes at 2.b. on pages 21-25, why is there no extrapolation of the numbers against the specific class to arrive at a per capita injury? For example, if the class of persons suffering a loss of \$3,347,443 in the year 2005 is one hundred then you have a substantial loss per person. However, if the class affected comprises over three million persons, then the reported loss is about \$1.00 per person. According to the Direct Selling Association, there are 12.3 million direct sellers in the United States (DSA Website). This would extrapolate to a per capita loss in the year 2005 of a mere 28 cents per person per year – far less than the cost of just one postage stamp. I do not mean in any way to minimize the need to capture and prosecute those who commit fraud. However, where the FTC appears to be justifying this broad sweeping rule based upon a perceived fraud industry of epidemic proportions, when using the FTC's own numbers the problem is certainly not at the fever pitch the FTC would suggest.
7. In the workshop or party plan setting, people are invited to attend who are new potential recruits and admittedly strangers to the person offering the business opportunity. Frequently a person will bring a friend or relative who is not even from the vicinity of the work shop. Assuming the attendees are from other towns or states, how would the seller of the business opportunely ever be able to know, with any degree of accuracy, the identities and phone numbers of the ten purchasers of the business opportunity nearest that potential recruit?

Again, my effort is not to debate each point of the FTC proposed rule and the underlying rationale that has been submitted, but rather to simply point out a few features of the FTC's work product that suggest that the FTC needs to take more time and effort to understand the direct selling industry before proposing rules to regulate it. Along with other executives in the industry, I would be pleased to work with you in this process. It seems that if a need is perceived, then an approach should be undertaken that is tailored to direct selling as it relates to business opportunities, and not just the marketing and selling of business opportunities in general. This is a unique industry with unique problems and opportunities. Please take the time to get to know us before you impose rules that may hurt us very badly.


Respectfully,

/ Shelli Gardner
Chairman and CEO
Stampin' Up! Inc.